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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MYRON COLEMAN,

Defendant and Appellant.

B159753

(Super. Ct. No. VA069661)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Larry S. Knupp, Judge. Affirmed.

Bruce A. Beckman, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General of the State of California, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan D. Martynec, Supervising Deputy Attorney General, and Alan D. Tate, Deputy Attorney General, for Plaintiff and Respondent.

Appellant Myron Coleman was convicted, following a jury trial, of one count of second degree robbery in violation of Penal Code section¹ 211. Appellant admitted the truth of the allegations that he had suffered a prior serious or violent felony conviction within the meaning of section 667, subdivisions (b) through (i) and 1170.12 (the "three strikes" law) and five prior convictions for which he served prison terms within the meaning of section 667.5, subdivision (b). The trial court sentenced appellant to a total term of 15 years in prison, consisting of the high term of 5 years for the robbery conviction, doubled to 10 years pursuant to the three strikes law, plus five one-year terms for the prior convictions within the meaning of section 667.5.

Appellant appeals from the judgment of conviction, contending that there is insufficient evidence to support his robbery conviction and that the trial court erred in instructing the jury with CALJIC No. 17.41.1. We affirm the judgment of conviction.

Facts

On February 15, 2002, at about 8 p.m., Melinda Bolton² approached Lacey Jones as Jones was going into a store near Central Avenue and 79th and 80th Streets. Bolton asked Jones for money, and Jones refused. Jones entered the store, purchased a few items and left the store carrying \$8 in her hand.

As Jones started to walk home, Bolton shoved Jones from behind and knocked her to the ground, injuring Jones's face and hands. Jones was afraid of dying. Bolton took the \$8 from Jones. As Jones stood up, appellant rode up on his bicycle and stopped two or three feet from Bolton and Jones. Bolton silently handed the \$8 to appellant. Appellant said: "Let's go." Bolton then stabbed Jones in the chest with a metal fork. Appellant and Bolton then left Jones, appellant moving faster than Bolton.

¹ All further statutory references are to the Penal Code unless otherwise specified.

² Bolton was a co-defendant in this case but is not a party to this appeal.

Los Angeles Police Officer Robert Olmos was on routine patrol in the area of Central Avenue and 80th Street and observed the robbery from a distance. He saw a man and two women engaged in what appeared to be an argument. As Officer Olmos's patrol car approached the group, appellant and Bolton began moving away from the place of the argument. Jones waved the officer down, yelling that she had been robbed. Officer Olmos got out the car and spoke with Jones, who pointed to appellant and Bolton and said that they had robbed her. Officer Olmos told them to stop and they complied. Officer Olmos observed that Jones had a fork embedded in her chest. Officer Olmos spoke with Jones, who told him that appellant had placed his foot on her back to hold her down while Bolton took the money from her. As Jones struggled with Bolton, Bolton stabbed her with the fork. She said that appellant had taken \$8 from her. That amount of cash was found in appellant's pants pocket.

Discussion

1. Sufficiency of the evidence

Appellant contends that there is insufficient evidence to show that he knew of Bolton's criminal purpose and acted with the intent of robbing or encouraging the robbery of Jones.

In reviewing the sufficiency of the evidence, "courts apply the substantial evidence test. Under this standard, the court 'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence - that is, evidence which is reasonable, credible, and of solid value - such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.]" (*People v. Cuevas* (1995) 12 Cal.4th 252, 260-261.)

The standard of review is the same when the prosecution relies on circumstantial evidence to prove guilt. (*People v. Bean* (1988) 46 Cal.3d 919, 932.) "Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court which must be convinced of the defendant's guilt

beyond a reasonable doubt. 'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.'" (*Id.* at pp. 932-933.)

Here, the circumstances reasonably justify the jury's guilty verdict. The evidence shows that appellant stopped his bicycle two or three feet from Bolton and Jones while the two were engaged in a struggle. He accepted cash from Bolton, then said: "Let's go." Bolton stabbed Jones, and then Bolton and appellant left the scene of the robbery at the same time, traveling in the same direction. The timing of appellant's arrival, his unquestioning acceptance of the cash, his statement which used the first person *plural* and the timing of his departure together create a reasonable inference that appellant was acting in concert with Bolton to steal money from Jones.

Appellant contends that the above evidence suggested innocence as well as guilt, and that the standard of review which requires affirmance in such a situation violates his right to due process under the U.S. Constitution.

We strongly question whether it would have been reasonable for the jury to infer that appellant was merely an innocent passer-by who "reflexively" accepted cash from a stranger involved in a dispute, addressed himself out loud and in the first person plural, and coincidentally left the scene of the robbery at the same time and in the same direction as the stranger who gave him the cash. However, assuming for the sake of argument that such an inference was reasonable, we see no violation of appellant's due process in an affirmance of his conviction.

There is no violation of a defendant's due process rights in a rule which acknowledges that it is the jury which must be convinced of the defendant's guilt beyond an reasonable doubt, not the appellate courts. The U.S. Constitution simply requires a court of review to determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*Jackson v. Virginia* (1979) 443 U.S.

307, 319.) That is the standard of review set forth in *People v. Bean*, *supra*, and applied in this case.

2. CALJIC No. 17.41.1

Appellant contends that the trial court erred in instructing the jury with CALJIC No. 17.41.1 because that instruction uses vague and ambiguous terms which misled the jury on the applicable law and cast doubt on the integrity of the verdict by creating a tendency toward false consensus.³ He further contends that this error violated his right to due process under the California and U.S. Constitutions. We see no error and hence no violation of appellant's constitutional rights.

CALJIC No. 17.41.1 provides: "The integrity of a trial requires that jurors, at all times during their deliberations, conduct themselves as required by these instructions. Accordingly, should it occur that any juror refuses to deliberate or expresses an intention to disregard the law or to decide the case based on penalty or punishment, or any other improper basis, it is the obligation of the other jurors to immediately advise the Court of the situation."

Our Supreme Court has recently held that CALJIC No. 17.41.1 does not infringe upon a defendant's federal or state constitutional right to trial by jury or his state constitutional right to a unanimous verdict. (*People v. Engelman* (2002) 28 Cal.4th 436.) Appellant's claims are merely restatements of the claims considered and rejected by the Court in reaching this holding.

³ We do not agree with respondent that appellant has waived this issue by failing to object to CALJIC No. 17.41.1. Section 1259 permits review of an instruction given by the trial court even though no exception was taken to it, if the substantial rights of the defendant were affected thereby. "Ascertaining whether claimed instructional error affected the substantial rights of the defendant necessarily requires an examination of the merits of the claim -- at least to the extent of ascertaining whether the asserted error would result in prejudice if error it was." (*People v. Andersen* (1994) 26 Cal.App.4th 1241, 1249.) Hence, we review the claim.

The Court in *Engelman* rejected a claim that the instruction caused or encouraged minority jurors to go along with the majority rather than to exercise their independent judgment. (*People v. Engelman, supra*, 28 Cal.4th at pp. 444-445.) Appellant's claim that the instruction creates a false consensus is indistinguishable from this claim.

The Court acknowledged that the language of the instruction was vague and could permit members of the jury to provide their own interpretations of what is improper. (*People v. Engelman, supra*, 28 Cal.4th at p. 447.) That is appellant's second claim herein.

However, the Court concluded only that the instruction "creates a risk to the proper functioning of jury deliberations" and "has the potential to intrude unnecessarily on the deliberative process and affect it adversely." (*People v. Engelman, supra*, 28 Cal.4th at pp. 440, 449.) We see nothing to suggest that that potential was realized here. Appellant has not demonstrated any prejudice from the instruction. Accordingly, we reject appellant's claim of error.

Disposition

The judgment is affirmed.

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ARMSTRONG, J.

We concur:

GRIGNON, Acting P.J.

MOSK, J.